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No. 111 Original

In The

Supreme Court of the United States

October Term, 1988

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff in Intervention,

v.

STATE OF NEW YORK,

Defendant.

MOTION OF THE STATE OF NEW MEXICO FOR LEAVE TO INTERVENE

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Pursuant to Rule 9 of the Rules of the Supreme Court, the State of New Mexico, by its Attorney General, Hal Stratton, moves the Court for an order permitting it to intervene as a plaintiff in this cause and permitting it to adopt, to the extent appropriate, the Complaint in Intervention and Brief in Support of Motion for Leave to File heretofore filed by the State of Texas, Plaintiff in Intervention. In support of this motion, New Mexico states as follows:

1. On or about May 31, 1988, the Court granted the motion of Plaintiff State of Delaware for leave to file a complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York as to which state is entitled to claim and take possession of certain unclaimed intangible personal property, consisting of moneys and other intangible property ("*Excess Receipts*"),[1] held or formerly held by securities brokerage houses incorporated in Delaware and demanded by or remitted to New York.

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master in this case.

3. On or about February 21, 1989, the Court granted the motion of Plaintiff in Intervention State of Texas to intervene and file its Complaint in Intervention in this case.

4. As set forth in detail in its Complaint, Texas claims a portion of the *Excess Receipts* that constitute the subject matter of the original controversy between Delaware and New York. Specifically, the portion of *Excess Receipts* held or formerly held by securities brokerage houses incorporated in Delaware that are attributable to *Issuers* incorporated in Texas is claimed.

5. Texas also claims the right to take custodial possession of certain additional excess receipts, consisting of excess receipts attributable to *Issuers* incorporated in Texas held or formerly held by the *Depository Trust Com-*

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[1] In its Complaint in Intervention, Texas has defined certain terms. New Mexico incorporates those definitions herein by reference and has italicized the defined terms herein.

pany and excess receipts that have arisen in connection with *Distributions* made by Texas municipal and other *Governmental Issuers* ("*Additional Excess Receipts*") that are now being demanded by or remitted to New York. It is the understanding of New Mexico that the Court intends to consider claims to both the *Excess Receipts* originally at issue, and the *Additional Excess Receipts* identified by Texas.

6. Texas claims a portion of the *Excess Receipts* and the *Additional Excess Receipts* for the reason that they constitute a debt owed by the *Issuer* to the securities' *Beneficial Owner*. If the identity of the *Beneficial Owner* is unknown, the *Excess Receipts* and *Additional Excess Receipts* should be remitted to the state of incorporation of the *Issuer* under that state's unclaimed property law.

7. New Mexico claims a portion of the *Excess Receipts* and *Additional Excess Receipts* at issue in this action. Specifically, the portions of the *Excess Receipts* and *Additional Excess Receipts* attributable to *Issuers* incorporated in the State of New Mexico and to New Mexico municipalities and other governmental entities are claimed.

8. The amount of *Excess Receipts* and *Additional Excess Receipts* that New Mexico is entitled to claim is presently unknown. New Mexico has never, prior to this lawsuit, had any reason to identify and quantify such *Excess Receipts* and *Additional Excess Receipts*. However, it is probable that at least one *Issuer* incorporated in New Mexico has generated *Excess Receipts* and *Additional Excess Receipts*. Moreover, it is a virtual certainty that bonds issued by New Mexico municipalities and other

governmental entities have generated *Additional Excess Receipts* subject to the claim of New Mexico.

9. New Mexico asserts its claim pursuant to New Mexico Statutes Annotated Chapter 7, Article 8, the "Uniform Disposition of Unclaimed Property Act." The New Mexico law provides, in essence, for the custodial taking of abandoned or unclaimed tangible or intangible personal property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to the property has been asserted within the applicable dormancy period, which for most types of personal property is seven[2] years.

10. New Mexico supports, and adopts as if fully set forth in pleadings of its own, Texas' Complaint in Intervention and Brief in Support of Motion for Leave to File, and the factual allegations and legal arguments set forth therein, to the extent they are applicable to the claims of New Mexico set forth in Paragraph 7 above.

11. Although New Mexico adopts the Complaint in Intervention filed by Texas, it is essential that it be permitted to intervene in its own right in this proceeding. The decision of the Court will establish a rule of law that will conclusively determine the future right of New Mexico to claim and take possession of unclaimed property similar or identical to the *Excess Receipts* and *Additional*

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[2] On April 6, 1989, the Governor of New Mexico signed into law House Bill 693, "An Act Relating to Unclaimed Property," N.M. Laws 1989, ch. 293. The Act, which rewrote the existing law, goes into effect on June 16, 1989. One of the more significant changes, for present purposes, is the reduction of the applicable dormancy period for most types of personal property from seven to five years.

Excess Receipts at issue herein. Additionally, if New Mexico is to establish its claim and right to take custodial possession of a portion of the property presently at issue, it must have access to the discovery process in order to identify those *Excess Receipts* and *Additional Excess Receipts* attributable to *Issuers* incorporated in New Mexico. As a party, New Mexico can obtain a ruling from the Court recognizing its right to take possession of specific unclaimed property pursuant to its individual unclaimed property laws and ordering New York to tender such property to it.

12. Based on the foregoing, New Mexico is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure. Alternatively, New Mexico urges the court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b), Federal Rules of Civil Procedure.

13. The intervention of New Mexico in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the present parties. To the extent that it can do so, Texas has offered to serve as lead counsel for those states, including New Mexico, wishing to intervene and represent themselves in this case. The addition of New Mexico as a Plaintiff in Intervention will not result, therefore, in an unmanageable increase in the number of parties to this litigation.

14. The Court, in *Western Union Telegraph Company v. Pennsylvania,* 368 U.S. 71 (1961), recognized the difficulties inherent in resolving controversies between different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the

appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. *See also, Pennsylvania v. New York,* 407 U.S. 206 (1972). It is such an opportunity to present its claim that New Mexico seeks by urging this Court to grant leave to intervene herein.

WHEREFORE, New Mexico prays that it be permitted to intervene as a plaintiff in this case and to adopt, as if fully set forth in pleadings of its own, Texas' Complaint in Intervention and Brief in Support of the Motion for Leave to File, and the factual allegations and legal arguments set forth therein, to the extent same are applicable to the claims of New Mexico. Alternatively, New Mexico prays that it be permitted to file its own Complaint in Intervention setting forth the factual and legal arguments asserted by Texas in its Complaint and seeking, on behalf of New Mexico, relief of the same nature as that sought by Texas.

Dated: April 24, 1989.

Respectfully submitted,

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